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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 and adopt the statute of the International Tribunal annexed to the Secretary-General's report prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993.

2. By its resolution 1329 (2000) of 30 November 2000, the Security Council decided to establish a pool of ad litem judges in the International Tribunal. To that end, it decided to amend articles 12, 13 and 14 of the statute of the International Tribunal and to replace those articles with the provisions set out in annex I to that resolution.

3. Elections for ad litem judges at the International Tribunal were last held in 2001. The terms of office of the 27 ad litem judges who were elected in those elections expired on 11 June 2005.

4. Pursuant to what is now article 13 ter, paragraph 1 (a), of the statute of the International Tribunal, the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 16 December 2004, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for ad litem judges of the International Tribunal. In accordance with article 13 ter, paragraph 1 (b), of the statute, as so amended, each State was invited to nominate, within 60 days of the date of the invitation, up to four candidates. The Legal Counsel informed States that, should they decide to nominate two or more candidates, then they were at liberty, should they wish to do so, to nominate candidates who were of the same nationality

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as each other. He also informed them that they were at liberty, should they wish to do so, to nominate a candidate or candidates who were of the same nationality as a permanent judge of the International Tribunal. He further advised them that, should they decide to nominate a candidate or candidates, then, in accordance with article 13 ter, paragraph 1 (b), of the statute of the International Tribunal, they should take into account the importance of a fair representation of female and male candidates.

5. By its resolution 1597 (2005) of 20 April 2005, the Security Council amended article 13 ter of the Tribunal's statute to allow for the re-election of existing ad litem judges.

6. The 33 nominations which had been received by the Secretary-General within the period stipulated in article 13 ter, paragraph 1 (b), of the statute of the International Tribunal were forwarded by the Secretary-General to the President of the Security Council, in accordance with article 13 ter, paragraph 1 (c), as so amended, by means of a letter dated 13 July 2005 (S/2005/454). By means of a letter dated 14 July 2005, the Legal Counsel also forwarded to the President of the Security Council, in case the Council should wish to consider it receivable, one additional nomination which had been received by the Secretary-General following the expiry of the period stipulated in article 13 ter, paragraph 1 (b), of the statute of the International Tribunal, as amended. At its 5236th meeting, on 26 July 2005, the Security Council, in accordance with article 13 ter, paragraph 1 (c), of the statute of the International Tribunal, established a list of 34 candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1613 (2005) of 26 July 2005 and was formally conveyed to the President of the General Assembly by means of a letter dated 26 July 2005 from the President of the Security Council.

7. The list of candidates for ad litem judges and the procedure for the election of the ad litem judges of the International Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/59/888).

II. List of candidates for ad litem judges of the International Tribunal

8. The list of candidates for ad litem judges of the International Tribunal is as follows:

Mr. Tanvir Bashir Ansari (Pakistan)

Mr. Melville Baird (Trinidad and Tobago)

Mr. Frans Bauduin (Netherlands)

Mr. Giancarlo Roberto Bellelli (Italy)

Mr. Ishaq Usman Bello (Nigeria)

Mr. Ali Nawaz Chowhan (Pakistan)

Mr. Pedro David (Argentina)

Mr. Ahmad Farawati (Syrian Arab Republic)

Ms. Elizabeth Gwaunza (Zimbabwe)

Mr. Burton Hall (Bahamas)

Mr. Frederik Harhoff (Denmark)

Mr. Frank Höpfel (Austria)

Ms. Tsvetana Kamenova (Bulgaria)

Mr. Muhammad Muzammal Khan (Pakistan)

Mr. Uldis Kinis (Latvia)

Mr. Raimo Lahti (Finland)

Ms. Flavia Lattanzi (Italy)

Mr. Antoine Mindua (Democratic Republic of the Congo)

Mr. Jawdat Naboty (Syrian Arab Republic)

Ms. Janet Nosworthy (Jamaica)

Ms. Chioma Egondu Nwosu-Iheme (Nigeria)

Ms. Prisca Matimba Nyambe (Zambia)

Ms. Michèle Picard (France)

Mr. Brynmor Pollard (Guyana)

Mr. Árpád Prandler (Hungary)

Ms. Kimberly Prost (Canada)

Mr. Sheikh Abdul Rashid (Pakistan)

Ms. Vonimbolana Rasoazanany (Madagascar)

Mr. Ole Bjørn Støle (Norway)

Mr. Krister Thelin (Sweden)

Mr. Klaus Tolksdorf (Germany)

Mr. Stefan Trechsel (Switzerland)

Mr. Abubakar Bashir Wali (Nigeria)

Mr. Tan Sri Dato Lamin Haji Mohd Yunus (Malaysia)

III. Procedure for the election of ad litem judges

9. The election of ad litem judges will take place in accordance with the following provisions:

(a) Article 13 and article 13 ter of the statute of the International Tribunal, as amended;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal, it was decided at the time of the previous elections of judges in 1993, 1997, 1998 and 2001

to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of ad litem judges of the International Tribunal.

10. In accordance with article 13 ter, paragraph 1 (d), of the statute of the International Tribunal, as amended, the Holy See, being a non-member State which maintains a permanent observer mission at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

11. On the date of the election, the General Assembly will elect 27 ad litem judges from the list of candidates submitted to it by the Security Council.

12. According to article 13 of the statute of the International Tribunal, as amended, ad litem judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to the same provision, due account shall be taken in the overall composition of the Chambers and sections of the Trial Chambers of the International Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law, and human rights law.

13. In accordance with article 13 ter, paragraph 1 (d), of the statute of the International Tribunal, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

14. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 191 Member States, together with the one non-member State mentioned in paragraph 10 above. Accordingly, 97 votes constitute an absolute majority in the Assembly for the purpose of the present election.

15. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 27 candidates.

16. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 27, a second ballot will be held and balloting will continue in the same meeting, if and as necessary, until 27 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 27 candidates less the number of candidates who have already obtained an absolute majority.

17. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

18. If, in the first ballot, more than 27 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at

the same meeting, if and as necessary, until 27 candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 27 candidates.

19. When 27 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.